IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 23-12825(MBK)
LTL MANAGEMENT LLC,	.	
	.	U.S. Courthouse
Debtor.	.	402 East State Street
	.	Trenton, NJ 08608
LTL MANAGEMENT LLC,	.	Adv. No. 23-01092(MBK)
Plaintiff,	.	
v.	.	
THOSE PARTIES LISTED ON APPENDIX A TO COMPLAINT AND JOHN AND JANE DOES 1-1000,	.	
Defendants.	.	Friday, June 2, 2023
	.	11:27 a.m.

TRANSCRIPT OF DEBTOR'S MOTION TO COMPEL [604]; DEBTOR'S OMNIBUS MOTION TO COMPEL [638]; DEBTOR'S MOTION FOR A BRIDGE ORDER [147]

BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

Audio Operator: Kiya Martin

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THE COURT: Good morning. This is Judge Kaplan. It's still morning except for Mr. Placitella, who I guess it's close to dinnertime over in France. I'll let everyone turn on videos if you wish and we can move to the three matters that are on the agenda.

I don't want to interfere further with Mr. Placitella's vacation so we can go to the third matter at the outset, which is the debtor request for a bridge order with respect to the automatic stay and the extension of the injunction.

I see Mr. Gordon. I am not inclined to enter the bridge order at this juncture. I think it's appropriate to have the matter addressed on June 13th, and I'm inclined to allow parties to file opposition by close of business on June 9th. That's the Friday before the Tuesday hearing. The reason is I don't see any indication that there's going to be discovery undertaken.

I am hoping and I have confidence that plaintiff's counsel and bankruptcy counsel are cognizant of 362(a)(3) and the parameter, 362(k), and the tools available to the Court if there are willful violations of the automatic stay. And of course the recognition, I think in the Third Circuit, that actions taken in violation of the stay are, let's use a phrase we all have heard, void or voidable. So with that, I'll hear any other concerns.

I'll turn to Mr. Gordon first.

MR. GORDON: Yeah. Your Honor, just, I mean, obviously I heard your ruling, but I don't think any of the parties, even with the oppositions that were filed, is really contesting the point that these claims against Kenvue and Janssen are subject to the automatic stay. So, from our perspective, these are clear ongoing violations of the stay and the urgency is really that, and it sounds like Your Honor reviewed everything carefully, but we've got subpoenas for apex depositions that are set to occur within just a couple of days of the 13th. And that means potentially preparations have to begin in connection with those.

And then, perhaps a more overriding concern is that the company's experience has been that when an order, like the order that was entered yesterday, denying the motions to quash occurs, these orders spread throughout the tort system very quickly. There are a number of other cases where claims like this are attempted to be made against Kenvue and Janssen. And we could now have sort of real chaos in the next 10 or 11 days. And that was the reason for the urgency.

And we kind of looked at it, I guess the opposite way of maybe Your Honor did, which is, is there really any harm to Mr. Placitella's clients by just basically recognizing that the stay does exist until there can be the full hearing that we could have this bridge. If in fact their position is they're

not going to press anything in the meantime, there's certainly no harm for that. But, again, I understand Your Honor's view.

THE COURT: Well, I'm always somewhat reluctant, even though I have done so in the past. I'm always reluctant just entering orders which confirm what the Code provides. And with respect to the automatic stay and the parameter, the parties can read the Code and appreciate it and are cognizant.

Mr. Placitella, do you wish to be heard?

MR. PLACITELLA: Yes, Your Honor. Thank you for accommodating my pre-planned vacation.

We are content. The short answer to your question is, these depositions aren't going to go forward before the hearing on the 13th. Judge Viscomi has basically put a structure in place that requires coordination on the lead lawyer. I've been in touch with virtually everybody who's interested.

But to be clear, we are contesting ultimately the automatic stay. We do not believe that it applies to Kenvue or Janssen and we fully intend to brief that. And we are very concerned about any loose language in an order such as submitted by Mr. Gordon that would suggest that some kind of predetermination has been made that the stay applies. We're aware of what the Bankruptcy Code provides, but we believe we have the full right to brief that issue and that there should be no loose language as suggested by Mr. Gordon in his order to

in any way predetermine that.

Just to be clear, I was served with motion papers literally in the middle of the night with no justification. And that was totally contrary to the spirit of the agreement reached with J&J and its affiliates before Judge Viscomi. We were provided no time to respond with no justification and a total disregard of our client's due process rights. And for Mr. Gordon to step up here and say, "Oh, it's not contested because we haven't filed anything," that's simply not fair.

And the suggestion that we should have done something on less than 24 hours notice substantively is not fair. Johnson and Johnson agreed to a schedule in the state court, in both Atlantic and Middlesex County, that recognized that I would, as a lawyer that was kind of driving this bus but coordinating with others who were just as involved and just as concerned, that I would be out of the country. They knew it. They agreed to a schedule that accommodated that. And the thing that you probably don't know, Your Honor, is, we did the same for J&J's counsel.

We agreed to not go forward with certain issues and to make accommodations to J&J's New Jersey counsel because he also was going to be out of the country. And so they knew what was going on. And then, all of the sudden, to just file something in the middle of the night and ask for things on short notice, I mean, I don't know how it works in Texas, but

in New Jersey, civility matters. And the fact that we went out of our way to have discussions with Johnson & Johnson, its affiliates, two different courts to come up with a schedule that would prejudice no one and to have this happen, I have to just say, Is concerning. And to then say on the back end of that, and, oh, see Judge, by the way, there's no opposition, that's simply not fair.

And I'm happy to go into more detail, but I don't want to litigate the merits of the issue here. And I hear Your Honor, you want us to look at the Code. We're aware of the Code. But we've looked at the case law pretty clearly and we think that when we're given the opportunity to brief this, we will convince the Court that the stay does not apply.

And it's also worth noting that when this first came up on April 18th, they already had Mr. Bergeron's complaint in their hands. Although Mr. Kim couldn't really answer the question about why he was doing what he was doing and where the assets went, they had that complaint in their hands. They have waited 43 days to make this application. So yes, we are not prepared right now to address the substance and we would beg the Court's indulgence to give us the time.

This is an important issue, not just to Mr. Bergeron, not just to Kimberly Naranjo, but to many other plaintiffs across the country. And with that being said, I will remain silent and try to carry on my vacation.

Thank you.

THE COURT: Thank you, Mr. Placitella. Mr. Gordon, you can respond if you wish. I will just note I don't think a response is necessary in that it is my hope and expectation that this Court, maybe we have to coordinate with three courts, that this Court has provided the opportunity to review the law presented and the facts on this issue without having the worry that I have to make quick rulings to prevent discovery from going forward. In other words, another race.

This whole case has been, since April 4th, one race after another. And there's no need for it. I certainly haven't prejudged the law on it. I mean, obviously, the Court is familiar with the parameters of the 362(a)(3), but I'm certainly willing to review the briefing and to see if it applies in this case. And if the parties will hold up what I would think would be reasonable, hold up limited discovery until we can decide if the stay applies and you can work on a different schedule too.

I've given you the June 13th and the June 9th, date. It's up to the parties if you want more time and can agree to delay discovery further. But I'll let you meet and confer on that.

MR. PLACITELLA: Well, Your Honor, just to allay the Court's concerns, there's no intention to take these deposition in advance of the Court's ruling. I think I've coordinated

with all the interested counsel who have coordinated these depositions. I would like a few more days other than June 9th, because I don't return until June 10th and this has already taken up a day and a half of my pre-planned vacation. And I appreciate the Court letting me go first.

But, you know, if we could have until the next Monday or Tuesday with a promise that these depositions will not be pushed until the Court rules, that would be greatly appreciated.

THE COURT: Mr. Gordon, your thoughts?

MR. GORDON: I just want to make sure I understand when he says the depositions won't be pushed. That makes it sound like they're staying on the same dates. I think Mr. Placitella was indicating the opposite, that he's willing to push them off, move them back so that he has more time and the Court has time to enter a ruling. And if that's what's being offered, we appreciate that very much and that would make sense to us.

MR. PLACITELLA: That's exactly what's being offered because civility is the rule of the day.

THE COURT: Absolutely. Especially in New Jersey, but I'm sure it spreads elsewhere.

Right now, we'll have it on for those that 9th and 13th, but why don't you reach out and see if you want to work out more amenable days. All right.

MR. PLACITELLA: Thank you, Your Honor.

MR. GORDON: Thank you, Your Honor. Just so I'm clear. I'm not sure, maybe I missed something. I'm not sure I entirely understand what the 9th is. Is that a deadline for filing?

THE COURT: Deadline for opposition to the motion.

MR. GORDON: Got it. Thank you.

THE COURT: And it's just a matter of, I need to give the Court an opportunity to read it, too, so if I do push it up too close to the 13th, then I go in ill-prepared and I don't like that either. So see if you can work out a scheduling that facilitates each party's needs. Enjoy the rest of your vacation, Mr. Placitella?

MR. PLACITELLA: Thank you, Your Honor. Appreciate it. Thank you.

THE COURT: You're welcome.

MR. STOLZ: Your Honor, I saw some pleading filed with a June 22nd date. Is that an available date for them just so they have something to target?

THE COURT: I believe, if that's a Thursday, that was, I think Mr. Togut firm's --

MR. STOLZ: Correct.

THE COURT: Yeah, that would be available.

MR. PLACITELLA: That would be wonderful.

MR. STOLZ: Okay. Thank you, Your Honor.

THE COURT: I mean, we shouldn't lose a day without having an LTL matter in the month of June.

MR. GORDON: Well, there is a Bestwall hearing that day, Your Honor.

THE COURT: Well, again, take some time and see what works. The Court will accommodate. I'll do my best to accommodate you all.

MR. GORDON: Thanks, Your Honor.

MR. PLACITELLA: Thank you, Your Honor.

THE COURT: Thank you.

MR. PLACITELLA: All right.

THE COURT: All right.

Mr. Gordon, let's move to, I guess, the first matter on the agenda, which is the debtor's motion to compel the TCC to supplement certain interrogatory responses and document requests.

MR. GORDON: Yes, Your Honor. My partner, Dave Torborg, is going to handle that.

THE COURT: Oh, okay. Mr. Torborg.

MR. TORBORG: (No audible response)

THE COURT: Was he given presenter status?

MR. TORBORG: Can you hear me now?

THE COURT: Yes.

MR. TORBORG: Oh, sorry about that. I think I got muted.

Good morning.

THE COURT: Good morning.

MR. TORBORG: Thanks for taking the time to hear this. It certainly seems like you feel better, at least --

THE COURT: We're getting there. Yes.

MR. TORBORG: So our motion to compel the TCC seeks two things. One, any estimate that the TCC has concerning the debtor's talc liability, and, two, the foundational basis for its contention that LTL's board members breached their fiduciary duties to creditors.

On the first issue, there is and can be no dispute that the extent of the debtor's talc liability is relevant to the issue of financial distress. On the one hand, the TCC contends that LTL is not in financial distress. On the other hand, they say that the $8.9 billion proposed settlement is willfully inadequate. The letter suggests, of course, that they believe the liability is more than 8.9 billion. Perhaps, significantly greater than that.

Given that, we've asked the TCC to identify any estimate it has of the debtor's talc liability. In response, the TCC has stated it has no non-privileged documents. Now, if the TCC intends to put forth expert testimony on that matter, then we'll see it next week in expert reports. No problem. But it's not clear to us that they are intending to do that. None of the experts that they've disclosed to date have been

identified to testify on that topic, and none of them appear to have any prior experience on that matter.

What the TCC cannot do is simply refuse to state whether it even has estimates of the debtor's liability for talc claims. Local Bankruptcy Rule 7026-1 is very clear. It states, "When a party asserts a claim of privilege in response to or objection to a discovery request, the party must identify the nature of the privilege claim and indicate whether, with respect to the privilege, any document exists or any oral communications occurred." Notwithstanding this clear language, the TCC has refused to simply state whether it has any such estimates.

Now, why does the debtor care? Well, we want it to be perfectly clear in the motion to dismiss record whether the TCC has estimates of the debtor's talc liability but has declined for whatever reason not to provide those estimates to the Court in connection with the motion to dismiss. It's entirely predictable that the TCC, given its role, does have such an estimate and would intend to use that in connection with plan confirmation proceedings in arguing that the debtor's proposal is inadequate.

Let's say, hypothetically, the TCC believes that the debtor's talc liability is in the nature of say, 25 billion. To be clear, I'm making that figure up. No one has told me that. That's hypothetical.

Well, if that's the case, that would clearly be relevant evidence to whether the debtor is in financial distress. It would be unfair for the TCC to decline to reveal an estimate now at this stage of the case only to then trot out such an estimate later in connection with plan confirmation. It should either reveal the estimates now or be estopped from relying upon them later.

At the very least, the TCC should be compelled to tell the debtor and this Court whether they have an estimate or estimates of the debtor's talc liability, regardless of whether they will use them at the hearing. That will allow this Court and the Third Circuit to make any inferences that are appropriate. I have a few points in response to their points, but I'll keep that for rebuttal. That's the first issue.

The second issue is our request in Interrogatory Number 10, that the TCC provide the foundational basis for its contention that the amendments to the financing arrangements between LTL, HoldCo, and J&J breached the LTL member's fiduciary duties to creditors.

The TCC's response to date has simply been to refer to the attempted stripping of the 2021 funding agreement and then pointing us to go look at their motion for derivative standing. But corporations engage in transactions all the time that serve to change the relative balance of their assets and liabilities. Such transactions may give rise to potential

breaches of fiduciary duties only if the corporation is rendered insolvent.

In the All Serve (phonetic) decision, this Court extensively discussed New Jersey law on this topic that included the Francis vs. United Jersey Bank case, 87 N.J. 15 (1981). That decision stated, "While directors may owe a fiduciary duty to creditors also, that obligation generally has not been recognized in absence of insolvency."

Neither of the TCC's excuses for providing an appropriate response have any merits. First, they say that this fiduciary duty contention was made in a single line in a brief. Well, it was was actually two lines, and in any event, it made the statement. We're entitled to know the basis for it. It's a relevant issue in the case.

And second, they claim that we're asking for their legal analysis of the breach of fiduciary duty claim. We are not asking for that. We're asking for the factual basis, including whether they contend that LTL was rendered insolvent as a result of the funding agreement changes. Solvency is a factual question, not a legal analysis. In a 2011 decision in the W.R. Grace bankruptcy, 446 B.R. 96 at 105, the Delaware bankruptcy court stated, "We agree that a determination of solvency is a question of fact." So the TCC cannot refuse to answer on the basis that we're asking for a legal analysis.

Unless the Court has any questions, I'll cede the

floor to the TCC. Thank you.

THE COURT: Thank you. I might have questions, but I'd rather hear from the counsel for the TCC first. Who will it be? Mr. Winograd?

MR. WINOGRAD: Yes, Your Honor. This is Michael Winograd from Brown Rudnick, proposed counsel for the TCC.

Your Honor, let me just say a couple of quick things. Counsel for the debtor suggested that he would hold his reaction to our points that were in a brief for rebuttal. This is the kind of gamesmanship that I'm going to talk about in a moment. If he wanted to address -- this is like the standard case law on expert opinions.

If you know it's an issue, you know all the facts, it should be in an opening, not in a rebuttal. If he had something to rebut in our briefs, he should do it on his opening, not sort of save it for the last word. Be that as it may, Your Honor, I'll address each of these in turn.

First of all, let me just say something at the outset, Your Honor. The number of impasses that we have reached in this case on mundane discovery issues has to be unprecedented. Your Honor said it seems like there's something every day on this case. We are concerned about the delays and the timing of these motions, and I'll get to each of them in a moment.

With respect to this first motion, let me just

address the timing. This is directed to two TCC responses. The motion to compel was filed on May 25th. The responses and objections were received 10 days earlier on May 15th. They waited 10 days after that, including having received productions on the 18th, but they waited 10 days to file this motion to dismiss. And, again, we'll talk about it with respect to the second motion where it's even more egregious, but it's really becoming prejudicial.

With respect to the first issue, Your Honor, existence of the liability of talc estimates, we responded that there are no non-privileged analyses that we have. That's not to say that we do or don't have anything that's privileged. We don't have anything that could be subject to discovery. That shouldn't be a surprise. They're asking us, effectively, if we have some sort of, I guess, damages estimates. It's privileged information. We've clearly responded we have nothing non-privileged.

What I think they want when counsel says, well, you have to tell us if something exists. I think they're just asking for a privilege log, and we have raised this time and time again with them in meet and confers. The parties have simply not exchanged privilege logs. And to give you an example, as we cited in our brief, we asked counsel, Mr. Murdica, who is resolution counsel for J&J, in his deposition, did you calculate a per case average? Not what it

was, did you do it. We were told he was instructed not to answer based on privilege.

We asked him, did you compare to claimant lists? He was told, do not answer based on privilege. We never got an answer. We never got a privilege. Those are indistinguishable from the case and the issue at point. The parties simply haven't been exchanging privilege logs and that, as far as I can hear, is all they're really asking for.

And let me just make one other point before I move to the next topic, Your Honor. It seems like in some respects, this motion is a veiled effort to file some sort of motion in limine to restrict arguments that can be made at a motion to dismiss. If that is in fact the relief the debtor wants, they should file a motion in limine. Similar too, there is no difference if they're complaining that information that is privileged shouldn't be able to be used as a sword and shield, just like they wouldn't produce any of the alleged common interest materials concerning the termination of the 2021 funding agreement. If they want to make a motion in limine, they should make it, but they shouldn't do it, sort of subtly underhandedly through this motion to compel.

Let me move and unless Your Honor has questions on that topic, I'll move to the next one.

THE COURT: I'm going to hold all questions.

MR. WINOGRAD: Sure.

THE COURT: Go ahead.

MR. WINOGRAD: Smart, Your Honor.

Your Honor, the next is, whether it was one line or two lines, it was not even a full sentence. It was set off by em dashes in a sentence. It was a part of a sentence in our PI objection that said, "The attempted stripping of LTL's most significant asset in clear breach of LTL's fiduciary duties." That's what's at issue.

The debtor says they just want the underlying facts, as though this is sort of a contention interrogatory. We all know what the underlying facts are. There was a transfer of the consumer business that represented 50 percent of HoldCo's value. Then, there was a termination of the 2021 agreement. And then, there was a substitution of that agreement with a new 2023 funding agreement that had HoldCo, who had just transferred half of its assets as the sole obligor, and J&J's backstop was gone.

We cited to those very explanations, which were fairly detailed, in our objection to the PI and in our standing motion. The only thing that could possibly be left is an analysis of how those facts constitute a breach of duty. That is an analysis. That is a legal analysis. It is clearly work product. It's protected by Rule 26 and by Rule 33, which only permits discoverable information under 26. We cited the Upjohn case. This is crystal clear and squarely within the privilege.

Now, LTL, I know that counsel just cited a whole bunch of cases that were not in its brief and I have not read them. I can't address them. Started talking about solvency, which they don't mention. But what I can tell you, Your Honor, is they cite one case and the one case that they cite that somehow an attorney's legal analysis as to whether something constitutes a breach of duty that was stated in a legal brief in the past, by the way, it's not even a brief in this motion, is somehow subject to discovery. They cite one case and that was the Barnes case from the district of D.C. in 2010. And that case undermines their position as we noted in our brief.

The court there in discussing and characterizing describing the interrogatory at issue said plaintiff's request essentially asks for defendant's contention as to the accuracy of the detention and strip search data spreadsheet. This is a contention that relates to a fact. The court granted the motion because it was a request to verify the accuracy of a date of data in a spreadsheet. That is not the same as a request for a lawyer's legal analysis that supports its legal position that's set forth in a prior legal brief.

Your Honor, this motion should be denied for multiple reasons that I just outlined, Your Honor, out of hand.

Thank you.

THE COURT: All right. Thank you, Mr. Winograd.

Sometimes I wonder what it would have been like had I

just acceded to your request and had all the arguments done on May 23rd. What would you all have done for the past month?

So Mr. Torborg, response.

MR. TORBORG: Yes, I would like to address a couple of points. Thank you, Your Honor.

First, in terms of the timing of when we filed the motion to compel, I mean, we had a meet confer between the time we got the responses. There's no deadline for us to file any such motion. We're working as hard as we can. I think the Court appreciates we have a lot on our plates. We filed the motion well over a month in advance of the hearing on this case, so I don't see the reason for that complaint.

On the first issue, on the estimates, I didn't hear any response to Bankruptcy Rule 7026-1, which I think is dispositive. We're not looking for a privileged log. We're looking for an answer to an interrogatory and a production of documents.

And then, finally, with respect to the discussion in their brief about instances where counsel has appropriately instructed witnesses not to answer, that has nothing to do with this interrogatory. It's completely irrelevant. The fact that they're going to those lengths to respond suggests they don't have much to say in response to the issue here.

On the question of the breach fiduciary duty interrogatory, if Your Honor has read our brief, we clearly did

cite case law and discussed the issue of insolvency, including Your Honor's opinion in All Serve, but I don't know if Mr. Winograd's been too busy to read the brief, but we clearly discussed that.

And then, secondly, I didn't hear any response to our points that we would like to know if they're alleging that LTL was rendered insolvent. And if so, how? That's clearly a factual issue and we're entitled to a response on that.

So that's all I have. Thank you.

THE COURT: All right. Thank you.

Mr. Winograd.

MR. WINOGRAD: May I respond, Your Honor?

THE COURT: Yes.

THE COURT: Your Honor, as to the timing, we're talking about 10 days. It gets even more egregious in the next motion, which we'll talk about. In terms of this being a month in advance of trial, we have depositions going on. It's was dropped, and in fact, on their own request, even though it was fully briefed, they delayed the hearing until today. It's smack dab in the middle of depositions, which we, the TCC, and other counsel are taking.

The idea that the exact same instructions not to answer that have never been -- no answers to which have been provided is somehow irrelevant, they are indistinguishable. They're literally indistinguishable as we set out in the brief.

And the idea that we should be instructed to answer on insolvency, that's simply not what they asked for. They said "Provide the basis for the contention that LTL board breached fiduciary duties." That's just simply not at issue here.

I would have a separate response for it, Your Honor, but it's simply not what is at issue here. We have explained to them the factual basis underlying that statement of law. They are simply asking for legal analysis.

Thank you, Your Honor.

THE COURT: All right. Thank you all.

With respect to the request for estimates as to the dollar value of the aggregate liability or estimate as to the amount that would be required to resolve the liabilities in the tort system, the Court at this juncture can't imagine that that information wouldn't be subject to work product or attorney-client privilege. That being said, there is a requirement under both local rules and under the federal rules to identify whether -- the Committee is required to identify whether it has that information or documents.

I'm not requiring a privilege log given the restricted and constricted schedule that we have, but the Committee should basically give the converse of the answer it already gave. It acknowledged it had no non-privileged documents or information. It should acknowledge that it has information or document, that they are subject to appropriate

privilege. What that does for the debtor is beyond me. But I'm not here to strategize, but I'm not going to, at this juncture, require any type of privilege log be completed.

It couldn't possibly be compiled or reviewed in advance of the motion to dismiss. So I remind everyone that under Rule 26(b)(1) proportionality, which include the needs of the case, the relevance of the issues, and the relevance of the discovery, all are taken into account. So there should be, what I'm requiring is simple responses identifying whether or not the Committee is in possession of information or documents for which they assert a privilege that would be responsive to the discovery sought.

With respect to the contention interrogatory, the Committee is required simply to advise the debtor whether or not it is in possession of fact beyond which they have included in their standing motion or PI response. In other words, are there any additional facts which support the claim that LTL's management engaged in a breach of fiduciary duty that are not included in the information provided to date or referenced in the responses.

Needless to say, when we get to the hearing on these matters, we're going to look at what's been provided and what has not been provided in discovery as to whether evidence at trial will be admissible or we'll consider it on motions in limine in advance.

I don't believe there are other issues with respect to the motion at Docket 604. If not, we can move to debtor's omnibus motion to compel plaintiff's firm to supplement their responses to interrogatories and document requests. I think it's docketed at 638.

Mr. Torborg, are you up again?

MR. TORBORG: I am up again, Your Honor.

THE COURT: All right.

MR. TORBORG: Thank you. Again, David Torborg with Jones Day on behalf of the debtor.

This is a motion directed at nine plaintiff law firms. These law firms either represent individual members of the TCC, have filed motions to dismiss on behalf of one or more clients, or have otherwise been active in these proceedings. I'd like to start with a little bit of histories because I suspect this might be a little confusing.

Initially, we served Rule 33 interrogatories and Rule 34 requests for production. Those discovery requests were directed to certain plaintiff firms and their individual clients. So, for example, the debtor's interrogatories to the Arnold and Itkin firm were directed to Arnold and Itkin, LLP, and Arnold and Itkin, LLP, acting for Arnold and Itkin talc claimants. Some of the plaintiff firms to which we served this discovery objected the discovery was improperly served on them, claiming they were not parties to the motion to dismiss

proceeding. Nonetheless, many of the firms did respond to the discovery albeit largely with relevancy and privilege objections.

Given the objections to whether they were appropriate parties, the debtor thereafter two days later served Rule 45 document subpoenas on these plaintiff firms and three others. The debtor's motion seeks three categories of information. First, we seek information on the total number of talc claims against the debtor, filed and unfiled, for which the law firm served as counsel. There should be no debate that the number of talc claims faced by the debtor is relevant to the issue of financial distress. Most of the firms responded simply that the debtor already has information on the number of claims filed against it.

That, of course, tells us nothing about the number of unfiled claims. There's no good reason to withhold requested information. It should not be hard to provide. Beasley Allen and Maune Raichle identified the number of unfiled claims for which they serve as counsel in response to the interrogatory. One firm, the Barnes Law Group, argued that it cannot identify how many unfiled claims it has because those claims have not been fully investigated and evaluated. The TCC, which weighed in on this motion, despite discovery not being directed to it, makes the same point.

But we didn't ask how many claims will definitively

be filed. We asked the number of claims for which the law firm serves as counsel. The fact that a claimant has sought counsel concerning the possibility of asserting a claim is relevant to the debtor's talc liability.

The TCC seems to argue that the number of claims or potential claims from just nine plaintiff firms is not relevant because there are more than a hundred firms that have such claims. That may be so, but these firms have taken a leadership role in this case and the information sought is relevant.

The TCC further argues that the Court earlier this week declined to order the discovery sought here. The Court did no such thing. It certainly has not held that the number of unfiled claims is irrelevant to the question of financial distress in the motion to dismiss proceeding. Before I move to the next issue, I would like to address again the suggestion that the debtor should have filed this motion weeks ago according to the TCC. Well, the discovery was not even served until three weeks ago.

At the time we filed the motion, the responses that came in were less than two weeks old. And unlike the TCC's practice, we absolutely endeavor to follow the local rules, meet and confer, send letters outlining our problems with it, and propose compromises. There's no deadline to file the motion. And, again, we filed this motion more than a month

before the hearing. So that's the first issue.

The second issue is the debtor's request for communications between the nine plaintiff law firms on one hand and any other law firms or claimants on the other relating to the 8.9 billion proposed settlement. Some seven of the law firms refused to identify or produce any responsive communications, generally asserting privileged objections as stating they have, again, no non-privileged documents.

Communications about the proposed settlement are plainly relevant. Among other things, the communications may lead to the discovery of relevant evidence concerning the level of support for the proposed deal, efforts and motives of law firms to undermine it, and whether the proposed settlement is viewed as adequate.

There's no serious challenge to relevance. We recognize that there well may be some responsive communications that are privileged and subject to common interest protection, substance communications between firms that represent members of the TCC. But as this Court well knows, not every plaintiff firm holding talc claims against the debtor is aligned when it comes to this bankruptcy and a proposed settlement. There's no indication that the firms took this request seriously and actually searched their files for responsive communications and assessed the appropriate scope of any permissible common interest protection. The law firm should be required to do so.

The final issue concerns any documents in the law firms' possession that bear on the debtor's financial distress. That's Request for Production Number 15. The debtor is entitled to whatever documents the firms have or intend to use at the hearing pertinent to that indisputably relevant issue. Non-responses or generic responses to briefs or press releases are not sufficient. If the firms have nothing to produce, that's fine. But if they do have information on that issue, such as estimates of the debtor's talc liability, it should be produced.

Finally, I would like to respond to the brief that the Ruckdeschel firm filed. It accuses the debtor and Jones Day of bad faith, sloppiness, carelessness, and the like on the basis that that firm never invoked a claim of privilege. Our deficiency letter did inadvertently transpose another firm's objections to that firm's objections, but the Ruckdeschel firm did in fact assert a privilege objection in its objection.

While the responses did not use the word privilege, the first page of their objection states, "Service of discovery upon counsel for a claimant seeking the thought processes and personal opinions of counsel regarding the proceeding is improper absence of showing of how such discovery relates to an issue in this case and would lead to admissible evidence."

It made a similar objection two pages later. We interpreted this as a general privileged objection and we

believe Rule 7026-1 also refers to surgeons of work product protection as a basis for needing to follow the local rule.

So unless the Court has any questions, that's all I have. Thank you.

THE COURT: All right. Again, let me hear, and I expect I'll be hearing a little bit more this time from more firms.

Mr. Ruckdeschel.

MR. RUCKDESCHEL: Thank you, Your Honor. I had to get the mute. Now, let me take my hand down.

THE COURT: All right.

MR. RUCKDESCHEL: I'm glad you're feeling better, Judge.

THE COURT: Thank you.

MR. RUCKDESCHEL: I appreciate the time.

The first waffly explanation we've heard about the fictional demand letter sent to me by Jones Day happened right now. They sent a demand letter on May 22nd about the responses that I filed on behalf of my firm. I have maintained, I did maintain then, and I maintain now, it is improper to serve discovery on counsel asking about counsel's opinions about things that are outside of their representation of a particular client.

To the extent that the debtor wanted to seek information from Mr. Crouch about positions Mr. Crouch was

going to take, that discovery needed to be served on Mr. Crouch, and he would have responded and he would have asserted whatever appropriate work product or attorney-client privilege that was applicable. That didn't happen. The discovery was served on me.

And let's be clear. While there was a stray comment in the interrogatories that were served, they were serving it on the firms and on the individuals represented by the firms, the motion to compel acknowledges that the debtor has no complaint about what my firm did with respect to the interrogatories. They only raised one issue, tell us how many unfiled claims you have. And while I don't believe that's appropriate, I don't believe it's discoverable, I don't think it's important, I didn't want to bother the Court with it.

And so as I said in my opposition to the motion to compel, I nevertheless told them, while I stand on my objections, I don't want any unnecessary bickering and I don't have any clients that have told me they want to file a claim against the debtor that have not yet filed it. And they acknowledge in Page 3, Footnote 3, of the motion that that was sufficient. So there isn't any issue to compel my firm with about the interrogatories.

And then we go to the document request, which are only served on my firm. And, again, the materials that my firm has related to my representation of Mr. Crouch are the property

of Mr. Crouch. You want to do discovery of them, you serve the discovery on Mr. Crouch, he has his rights, he'll raise them. That didn't happen, right. They served a subpoena on my firm. And when I responded to that, they filed a two-page letter that goes into great detail, including an alleged quotation from the responses that's just fictional, it doesn't appear, that says I asserted a claim of attorney-client privilege.

They quote something that doesn't appear in my responses. They go into their explanation about the local rule and about discoverability. It's fiction. It didn't happen. They didn't come back when I pointed this out to them in my letter hours later. It took just hours for me to respond. I responded on the same day. And I said, hey, I didn't raise that objection, so I don't have any idea what you're talking about and I'd like you to withdraw it formally because you've now quoted things that are just fictional. It doesn't appear.

What do I get in response? Nothing. Nothing. What does the motion compel say about this little fiasco? Nothing. The first time we hear anything about it is counsel's attempt this morning to say, well, we interpreted this language in two sentences in your responses as an assertion of privilege. Well, I didn't hear that when I sent him the letter. And the letter is pretty strongly worded. I quoted from it in the opposition. I attached it for Your Honor. And it's very clear that I was taking a position that I hadn't raised a claim of

privilege. Period.

And nevertheless, no response. So what's the next thing I get? May 25th. Well, as a compromise, we'd like you to do this other stuff. They never raised these other alleged deficiencies with me. They raised one objection to the request for production. You asserted privilege and you didn't give us a log. Well, I didn't assert privilege. And it's true, I didn't give them a log because I didn't assert privilege. And it's improper to serve discovery on me for my personal stuff.

And I've got to tell you, Judge, if you're seeking discovery of John Ruckdeschel or the Ruckdeschel Law Firm's personal opinions about things beyond the positions I might take for my client, it's not going to be helpful to anybody, and we're going to have to figure out some ways to be clear that we're not overly colorful because I'm a colorful guy when I talk. And when I'm expressing my personal opinion, I do it. And that's not relevant to this case.

The positions that I take on behalf of my client for my client before this Court are relevant. And those are his. My personal information, what I personally think about the propriety of this proceeding, about opposing counsel, about settlement offers that haven't been made, or this alleged plan that's been submitted, my personal opinions aren't relevant and are never going to be admissible evidence in this case.

But that's the problem. There hasn't been a meet and

confer about this because there was nothing to meet and confer about. They raised one set of objections in May 22nd to the request for production, and that objection was you asserted privilege and you didn't give us a log. Well, I responded to them. I didn't assert privilege. Done. I dealt with their only objection that they raised.

Three days later, now they've got something else they want to do as a compromise. Well, what do I have to compromise about? I did what they asked. I addressed the concerns that they had. Is this just going to be an ever shifting, well, we're going to ignore what you said. We're going to ignore that we messed up and we had a fictional letter we sent you and we're not going to acknowledge it, but now we're going to demand that you do other stuff. It's inappropriate. Nothing I have is discoverable other than what I might do on behalf of Mr. Crouch, and they didn't serve discovery on Mr. Crouch for documents.

The motion should be denied. And, Your Honor, the more you let this gamesmanship go on, the more they're going to do it. Every time. We've just heard -- in response to the TCC's motion, we've just heard in the preface here, well, there's no deadline and we served it a month ahead, so apparently there's no hurry. Well, if there's no hurry, why did we have an ex parte request to shorten time? If we've got another month, why did I have to rush back from taking my wife

to the doctor so I can do this hearing here in my kitchen? Because they think we have to shorten time. And then they come before you and they say to the Court, well, Judge, we've got a whole nother month until the hearing. Those two things can't be true, and you've got to put an end to it, Judge. You've got to stop this.

Thank you. The motion should be denied.

THE COURT: All right. Thank you.

I have a question, Mr. Ruckdeschel. I'm going to ask it of you, but I'm going to hear the answer from counsel for the other firms for whom discovery is sought.

MR. RUCKDESCHEL: Of course.

THE COURT: If there is an interrogatory or if there was a subpoena served on the firm with the intent of drawing out information relevant to financial distress and the subpoena sought information as to the number of clients who have retained the firm to pursue claims for injuries due to use or exposure to talcum powder sold or marketed or distributed by J&J or its affiliate for which a lawsuit has not been filed, why is that not relevant and why would it be privileged? It's asking for a number. It's not asking for any communication.

MR. RUCKDESCHEL: Well, I can answer on behalf of myself, Judge.

THE COURT: That's all I'm asking for at this point.

MR. RUCKDESCHEL: And it's easy for me because the

Ruckdeschel law firm is me and now my wife has reactivated her license and she's working about halftime with me. God help her.

But I only have a handful of cases. But what I can tell you is, when clients come to my firm and they retain my firm, the first thing we have to do is investigate. And we investigate what their potential claims are, both in the tort system and otherwise. We then investigate what we believe the relative likelihood of success might be, right. We have to go through all this process with these things, and then we have to make a recommendation to our client as to what we believe the best course of action is for them.

And then, and only then, do they then decide what course of action is it that we're going to take. And I can tell you that there are often months in between the time that a client comes into my firm and retains my firm and the time that we actually make a decision about what we're going to do because the investigation takes a long time. And that's particularly true in the case of people, women that come in because their exposures are often secondhand, and so it takes more time. And it's often true in the case of people that have more complicated work histories and exposure histories. And it's often true in people where we've got to look.

And so the fact that you've retained a law firm doesn't mean a lawsuit's going to be filed. It doesn't even

mean a lawsuit's going to likely be filed.

THE COURT: But doesn't that go to the inferences the Court could draw from that evidence or the weight given to the evidence, not as to discovery?

MR. RUCKDESCHEL: Absolutely not. Absolutely not. And there are two reasons why.

One, it's completely irrelevant under the analysis of the Third Circuit in LTL 1, which says, the question here is, is there an immediate financial distress? And so speculating about things that might happen in the future is not part of what this Court's proper analysis should be. So for the purposes of the motion to dismiss, that's not the analysis that Your Honor should be doing.

And the facts that could be hypothesized as, well, if this happens and that happens and this happens, then there would be another claim filed. And then if that claim gets filed, and if that happens, this happens, and that happens, and this happens, that's exactly the kind of inferential chain that the Third Circuit said that's not on the table. That's not what we do here.

So that's number one. It's not relevant and it's not reasonably calculated to lead to the discovery of admissible evidence.

But number two is what I went through a minute ago. The fact that somebody hires my firm doesn't mean that I have

an expectation that I'm going to sue any particular defendant. And there could be an exception to that, right. A lifelong guy comes in from Pennsylvania and he worked for U.S. Steel his entire career. And in Pennsylvania, you can sue the employer, right. I'm pretty sure when that guy hires me, I'm going to sue U.S. Steel. But that doesn't happen. That's a rare case indeed.

And so the problem is the fact of retention means nothing with respect to whether a claim is going to be filed. It means nothing as to whether it's more likely than not that a claim will be filed. It means nothing. It's just a piece of nonsensical data that means nothing. In order for it to mean something in this case, you have to take at least three more inferential steps. And so that's just inherently speculative.

If somebody has, and this is the response I gave to them, none of my clients have advised me that I should file a claim against the debtor, right. That's what I responded, and they accepted that. So that's fine. Okay.

THE COURT: All right.

MR. RUCKDESCHEL: So that's my answer, Judge.

THE COURT: All right. Thank you.

Let me move to Mr. Satterley.

MR. SATTERLEY: Good morning, Your Honor. I guess good afternoon there on the East Coast, and I'm sorry to hear that you've been under the weather and I hope you get well

soon.

THE COURT: Thank you.

MR. SATTERLEY: Let me echo some of what Mr. Ruckdeschel has said, and I'm not going to be as long as he is. He made very good points. But I want to start with burdening Your Honor.

This is unduly burdensome that the debtor has brought this to your -- put this burden upon you because it's basically harassment. And they brought this to you claiming they've met and conferred when they haven't. I served responses on May 15th, responses and objections on behalf of my law firm and I produced a document. I'll talk about the document in a minute. But I haven't heard a single phone call. I've been in court in the Valadez case every day for weeks. We've done opening statements. We're putting on evidence against many J&J and LTL attorneys, I don't know, 5, 6, 7 there.

And at no point in time did anybody say, hey, by the way, Joe, you didn't adequately answer discovery. Nobody picked up the phone and called me and said, you need to produce some other document. So I don't even know what letter -- supposedly, somebody from Jones Day wrote a letter to me. I haven't seen it. I've been sort somewhere busy lately.

So I guess my point is, there's really not been any meet and confer on this issue. And so for this emergency motion advancing to today I think is just an attempt to harass

us and to burn the Court. So let me directly address the three points -- the three items that counsel says my firm should answer.

The total number of claims; the first item, the total number of claims filed versus unfiled. In the response to the discovery, I provide a letter dated April 20, 2023 to Ms. Allison Brown and Alex Calfo.

I said, in light of Judge Kaplan's ruling today, at today's hearing -- because Your Honor told us on April 20th, if you intend to file lawsuit, let them know.

"In light of Judge Kaplan's ruling at today's hearing, I write as a courtesy to inform you that Kazan firm's clients will file lawsuits against Johnson and Johnson and other protected entities, but not against LTL Management. Each Complaint-Summons will be served through official channels. The cases that will proceed immediately include at least the following."

And I listed all the cases that we intend to file. Any other case beyond that, is work-product privileged, because, as Mr. Ruckdeschel said, we're investigating the merits of the case.

And there's many cases that we investigate and decide not to take, not to accept. My firm has a history, and Johnson and Johnson knows this, that we represent some of the strongest cases you could possibly imagine, you know, they have autopsies

or tissue digestions and exact ingredients are found in the body, right next to the tumor. We're very, very particular about the type of cases that we select to represent.

So any client that is not on this list is work-product privilege. And I would reassert what Mr. Ruckdeschel said about if an attorney, or if a client has retained us, that doesn't mean we're actually going to file a lawsuit. We're still -- the retain to investigate.

So the total number of unfiled claims is privileged and to the except that Your Honor's compels that type of privy information, I'll have to seek Appellate relief because there's, under no circumstances, am I to turn over privileged information.

The second item that they sought is communications that I may have had with other lawyers regarding this topic and I asserted privilege as well.

Co-counsel privilege, I'm co-counsel with Mr. Maimon. The motion I have represented cases against J&J for years. Any communication I have with my co-counsel is privileged and I'm not going to turn any of that over.

The final issue is, my opinion about financial distress; my views about financial distress are not relevant. And my opinion about the value of each of my cases is privileged. Now, I did point out in the discovery that I have, they already have the demand letters that I've made on

individual cases.

They already have what's called a 998 filing. A 998 in California is actual pleading-type documents that serve upon the Defendants, so that when we win the case, if they don't meet that, we could get costs. And they already have those.

So everything that I have that's not privileged has been turned over and everything they're seeking is either harassment or they're seeking privilege.

Final point, Your Honor. The focus at the Motion to Dismiss is not on Joe Satterley or the Kazan law firm's thought processes about the Debtor or Joe Satterley or Kazan law firm's evaluation of each individual case, because I evaluate cases and I have thought process, that's not the focus.

The focus is on the Debtor and the Debtor has repeatedly said, in deposition, that they did no analysis, no estimates of their liability. So that's got to be the focus on the Motion to Dismiss, not on Joe Satterley's thought processes.

And with that, I'll submit, Your Honor. I hope Your Honor gets feeling better.

THE COURT: Thank you, Mr. Satterley.

Mr. Winograd?

MR. WINOGRAD: Thank you, Your Honor.

Mike Winograd from Brown Rudnick, again, on behalf of the TCC. And, Your Honor, I will try not to tread ground

that's already been covered. And of course, we're -- I'm speaking on behalf of the TCC and not the member representatives that received these subpoenas.

First of all, Your Honor, the flippant comments by counsel that somehow the TCC doesn't follow a practice of meeting and conferring is outlandish.

I won't say anymore than that, other than to say, in the 20 or 30 issues that have come up, we have affirmatively reached out to them on almost every single one of them.

They've cited one instance in the last briefing and again, we reached out to them to discuss that issue, apparently not in some formal meet and confer setting.

We were never consulted on this motion before it was filed. I understand we're not a subject of it, but we're certainly related and when I've reached out, it's been to the entire group on the other side.

With respect to the gamesmanship, Your Honor, this motion, and I expressly request that this motion be denied simply based on the timing. The responses and objections at issue were received on May 17th or earlier.

It took them two weeks to file a motion which they filed at 11:20 at night and then, suddenly asked for a hearing two days later.

Now, I know counsel says there's no rush here. Well, if there wasn't a rush as Mr. Ruckdeschel said, well, why the

two days' notice? But in any event, they sat on their hands for two weeks; that alone, warrants denial, Your Honor.

In addition to that, not only did they wait two weeks, but they decided to drop the motion in the middle of depositions when the TCC and the counsel on this call are preparing and taking depositions; two, three a day.

Tuesday alone, Your Honor, we had three depositions and a hearing with the Court. And, on Tuesday, when they requested that a fully-briefed motion that they filed and for which they rushed to file a reply brief, be adjourned and put off for another two days until today, they never once mentioned that they, hours later, were going to file another Motion to Dismiss.

Now, presumably, they wanted that motion heard before there was a ruling on the other one, but this is the type of gamesmanship and lack of transparency, Your Honor, that should not be countenanced and I request, and on those bases alone, this motion be denied.

Your Honor, with respect to the merits, with respect to unfiled claimants, the Court did rule to some extent on that on Tuesday, as we noted in the brief.

There were requests by the AHC for lists to know the whole pool of claimants to calculate liability. Your Honor said, I don't see how its relevant and it doesn't really matter if it's 50,000 or 30,000.

Your Honor did question the relevance of all of this. And Your Honor did say, you know what, let's come back to this after the Motion to Dismiss. And that's exactly what should happen here.

With respect to the idea that the relevance that they purport, things that the Debtor purports is a pretext. You know, counsel says, well, we just asked ten people, but we don't have to ask everyone.

If they really wanted to figure out who the entire pool is, they would have sent discovery to all of the law firms. They didn't. And these law firms, they say, well, these ten law firms happen to have taken a leadership role.

These law firms did not sign PSAs. These law firms did not file claimant lists with the PSAs. They didn't file lists with the 2019. It's just completely apples to oranges.

And even the AHC apparently, Your Honor, has not disclosed, its own members have not disclosed all of the claims.

According to the recent testimony this week from Mr. Nachawati, he things that the PSA is just an agreement to agree, there are lots of issues to work out. He doesn't think, or doesn't know, if the agreement is good for some claimants, and not for others. And he does not believe that he even filed or listed his mesothelioma claimants on his list.

This idea that we have to have the unfiled claimants

listed is betrayed by their own conduct.

Number 4, Your Honor, as counsel has said, so I won't go back into it deeply, and let me just add to that other point, counsel for -- I see the hand being raised by counsel for the AHC, counsel for the AHC confirmed as much on the call on Tuesday saying, yes, a plan is on file, but as I've said at the last hearing, we don't necessarily agree with everything that's in it and we're hard at work with the Debtors to try and have an amended plan filed that we do agree with.

Next, Your Honor, with respect to the privilege issue. A claim that has not been filed is privileged. The only communications about it are between a client and its counsel. It is privileged, it is off-limits.

There are no indicia of reliability. When somebody determines to file a claim and goes ahead and files it, the counsel is subject to Rule 11, has to do due diligence into the merits of those claims. They are indicia of reliability.

The idea that you can ask an attorney, and to use the words of counsel for the TCC, we're not asking how many claims will be filed. We're just asking how many claimants have sought counsel.

The idea that that is somehow not privileged and subject to discovery would contradict every discovery principle I'm aware of, Your Honor. I'm fairly certain that if I ask White and Case, are there, you know, has J&J approached you

about any potential lawsuits; have they consulted you, whether or not you've decided to file anything; is way out of bounds, Your Honor.

The fact that, and this was in the briefing, that some claimants have disclosed their unfiled claimants; the AHC has filed some, apparently, not all. Certain firms have responded by providing some does not impact the privilege or decisions of anybody else.

Your Honor, on the $8.9 billion being inadequate, they asked for the basis. They were told by the TCC, we didn't have anything non-privileged. The law firms, to the extent that, you know, have given them answers, they apparently just don't like the answers.

Again, damages analyses are privileged. There's not much to ask about that that conceivably could be not privileged, or already in the public or within the knowledge of J&J.

And the same, Your Honor, is true with respect to the questions about financial distress. The motion should be denied because of the gamesmanship, Your Honor, and on its merits, it fails as well. Thank you, Your Honor.

THE COURT: Thank you, Mr. Winograd.

Mr. Branham?

MR. BRANHAM: Good morning, Your Honor -- I guess afternoon, now. I don't have a whole lot to say here, except

to simply join in what Mr. Satterley, Mr. Ruckdeschel and Mr. Winograd already articulated.

You know, our firm is very similar to them in terms of the types of cases that we take, to the case in-firm, an entire analysis that we do.

And just because we're hired, doesn't mean we've decided to file something. I will tell you that I repeatedly, at least twice and maybe three times in my recollection, reached out directly to counsel at Jones Day, asking them, help me understand what the authority is for you to ask for this stuff. It's privileged; what do you think is not privileged?

And the answer was, they are papers; not, let's have a phone call. Not any of that. And then, you know, we're dragged up here as a law firm and, by the way, Judge, I'm admitted *pro hac* for a client in this, but not for my law firm.

So I just want to raise that because I don't want to create a problem. But you know, the idea that this needed to be done this fast, that it was effectively done, as you've heard from others, without any meaningful meet and confer, and really without any discussion at all or willingness to discuss the privileged and work product issues.

I think at the end of the day, belies what this is actually about, which is, they focused on people who drive hard and maybe that they feel like are thorns in their side, as opposed to any legitimate cases for discovery. And so, I would

certainly, on behalf of my law firm, which just all this was directed to, and for the reasons stated by everybody else, ask that you not (indiscernible).

THE COURT: Thank you, Mr. Branham.

Mr. Hansen?

MR. HANSEN: Thank you, Your Honor. Kris Hansen with Paul Hastings on behalf of the Ad Hoc Committee. Your Honor, I simply wanted to say one thing which was in response to the gratuitous comments from Mr. Winograd about Mr. Nachawati which really had nothing to do with this argument, but they seem to not be able to resist at any point in time.

If they wanted to cite the full facts from the deposition, Mr. Nachawati's got about 5,000 claimants on file and they were apparently 50 mesos [sic] that weren't put in there. So it's not relevant to this point, but I wanted Your Honor to know that.

I also wanted to point out to the Court again that we're the only party who has filed a 2019. If you look around, you're hearing lawyers say, I represent multiple clients; I'm appearing in the case; I'm making arguments in the case.

And notwithstanding Ms. Richenderfer's comments from the last week about how she doesn't think everybody has to suddenly comply with 2019, they do and they need to file those 2019 statements.

I don't have any thing else, Your Honor, I just

wanted to give you that factual background.

THE COURT: All right. Thank you.

Ms. Jones?

MS. JONES: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. JONES: Laura Davis Jones of Pachulski, Stang, Ziehl and Jones. First, Your Honor, it's wonderful to see you feeling well. It's good.

THE COURT: Thank you.

MS. JONES: Your Honor, just one quick comment. We were referenced Arnold and Itkin was referenced earlier in the hearing and, Your Honor, just because we did have that specific reference, we wanted to make you knew I was listening and going to respond.

Your Honor, after all the comments that have been made, I have nothing further to add other than what the TCC has already said, Your Honor. Thank you.

THE COURT: All right. Thank you.

Mr. Maimon?

MR. MAIMON: Good afternoon, Your Honor.

THE COURT: It's after noon; good afternoon.

MR. MAIMON: It is afternoon. I'll be brief. I think that there's a disconnect here between the Jones Day lawyers and the reality of practice as it exists outside of the bankruptcy process.

My colleagues have explained the process that we go through with regard to vetting claims and deciding what claims are viable and what claims can be filed and the advice that we give our clients about that, which are clearly privileged.

You know, Mr. Ruckdeschel talked about discovery on lawyers as non-parties. We are non-parties. Interrogatories and requests for production of documents are discovery vehicles for parties.

We do accept the subpoena, because we recognize that you can subpoena a non-party, but (indiscernible) asked for documents. And then, I would just raise with Your Honor, Your Honor asked the question of Mr. Ruckdeschel about well, what about just talking about the number of people who have come in your door, or the number of people who signed retainers; that number doesn't exist outside of documents.

And it's not incumbent upon my firm to start doing work and tabulating things. One of the things that we do is that we investigate claims and we also assemble documents. We have to be retained in order to be authorized to get medical records for our clients.

We do get medical records for our clients. We give the pathology reports that confirm whether or not they have the disease that might be filed about.

This is in sharp contrast to what a lot of the PSA partners of J&J have indicated in their depositions. We don't

have any confirmatory documents or pathology reports. I have to get those.

Those are privileged. If a client decides not to file a claim, it would be a HIPAA violation for me to start turning those over. The Jones Day lawyers cite no authority, none whatsoever, for discovery against lawyers as lawyers, as opposed to discovery against parties.

And in fact, their application within their motion to not file a memo of law is not, should not be taken by the Court as the bravado that this is all simple, that they get what they get.

It's a recognition, quite frankly, on their part, that the law does not support them. As Mr. Satterley said, I've litigated cases with him, as well as others who are the subject of these motions for years.

And our communications about various issues are communications as representatives of members of the committee. Our communications with counsel for the TCC, they're privileged and we shouldn't have to start talking about that.

Finally, with regard to the valuation of cases, the subpoena talks about, you know, what is the average amount. There is no average amount. That's not the way the ethical rules that we have to live under require us to conduct ourselves.

Each client has the authority to either accept or

reject an offer made to him or her and we cannot impose upon our clients "average settlement values," and we don't approach -- it would be a violation of our ethical rules to approach a one size fits all categorization: you have this disease, this is what you get.

That might be ultimately what happens in a bankruptcy because it's imposed on people. It might be in other types of situations where there's an administrative type of a program where this is the amount that you get, whether it's a tax credit or vouchers or what have you, but litigating our cases, that is against the ethical rules.

Finally, with regard to the liability; liability is not only, and the damages that a defendant owes is not simply, a matter of the medical bills or the lost earnings that a plaintiff has or even, quite frankly, the pain and suffering.

But the liability of a defendant is impacted also by the strength of the case against it. And so, yes, for sure, I have a lot of liability documents that J&J has produced to me, but they produced them to me and they know them and it would fill up Your Honor's courtroom more than it's already filled with boxes, to have liability evidence against J&J.

But I also have my analyses of that in documents. My analyses are privileged. They're work product. I have the analyses that Mr. Satterley and I have worked together; those are privileged.

Ms. O'Dell, Ms. Parfitt, in dealing with various issues, we exchange as co-counsel in cases, thoughts and mental processes.

These are all privileged and the fact that you have no, absolutely no legal authority put forward by the Debtor that supports this motion, and I'll set aside the knee-jerk reaction that seems to be to just get a short order, a short time-frame motion so that everybody has to come within two days and maybe one could be pulled over on over the Court's eyes.

The lack of any authority either for the discovery against lawyers or for the evisceration of the privileged dooms the motion. I thank the Court for its time.

THE COURT: All right. Thank you, Mr. Maimon. Be careful, you don't want to handcuff Mr. Winograd. We may be having motions on shortened time from him shortly, from what we've been told.

Ms. Placona?

MS. PLACONA: Thank you, Your Honor. Just some few comments, speaking on behalf of the Barnes Law Group. We echo the comments made by Mr. Ruckdeschel claiming privilege and work product and the Barnes Law Group has reviewed hundreds of cases and decided not to take those.

So we repeat those arguments. I also filed an objection last night on behalf of the firm, Ashcraft & Gerel, so at docket 661 that I just asked that Your Honor take into

consideration that I've adopted the objections by the TCC. Thank you.

THE COURT: Thank you, Ms. Placona.

Mr. Torborg, we're back to you.

MR. TORBORG: Thank you, Your Honor. All right. I'm not going to try to rebut everything that we heard over the last, probably going on an hour. I do want to hit a couple of things.

Start with some procedural things and then, some substance. First, in terms of the timing of the motion, I mean, Mr. Winograd wasn't involved in all these communications that went back and forth between us and the law firms.

Deficiency letters were sent. We sent our last proposed compromise email on the Thursday before Memorial Day, right? If we had filed a motion immediately after sending that, we would have been -- and we offered to meet and we offered, we invited law firms to meet and confer with us. They didn't, okay.

If we had filed the motion the next day or over the weekend, or even Monday, we would have been accused of jumping the gun, right. So we're really trying to be fair to everyone and trying not to burden the Court.

We've substantially, you know, limited our requests here. We heard some argument about requests, we didn't even move to compel upon. So, you know, I -- and then, also, the

other procedural issue is the authority question: whether we can serve Rule 33 and Rule 34 discovery on a law firm.

Well, you know, we took that off the table by serving the document subpoenas. So I don't know why we're hearing so much about that.

Substantively, we have three issues. One is the relevance of unfiled claims and whether they're privileged. I haven't heard any legal basis to say that the number of unfiled claims a law firm may have is privileged and I don't think there is any.

And if it was, I would be very surprised that two of the non-Plaintiff firms actually gave that to us. It is relevant and as your Court, as Your Honor recognized, it goes to, at best, it goes to weight, right.

And worst, it goes to weight of the evidence. How many unfiled claims have been accruing, remember, claims haven't been filed for 18 months because of the bankruptcy, right.

So the inventory of claims that's built up is relevant to financial distress. The fact that there might be some claims that eventually aren't filed, okay. That doesn't make the number of unfiled claims not relevant.

In terms of the request number 2; communications relating to the proposed settlement. Yeah, we recognize there might be some communications that are privileged, right, but

there might be communications that are not.

It's clearly relevant. I haven't heard anyone say that it's not relevant. So we want the law firms to actually search their files for communications with other law firms for which they do not share common interest and produce those.

So those are the follow up things I (indiscernible). Thank you.

THE COURT: All right. Thank you.

Mr. Winograd? You're on mute.

MR. WINOGRAD: Sorry, Your Honor. Just a few points to address what counsel said. Number one, with respect to Mr. Nachawati, Mr. Nachawati plainly testified that he had a number of unfiled claims. He gave that number. It was approximately whatever it was. And he then said that he does not believe that any of the meso claims were filed with the 2019. That was the point that I made. It is in fact accurate.

Number two, Your Honor, with respect to timing, we are all on a break-neck pace. We all understand that and motions will have to be filed on short notice, absolutely.

But to wait two weeks to file one and then, drop it, a motion like this, you know, in the middle of depositions, is a bridge too far, Your Honor.

The idea that the claims have to be relevant, they are not claims. As counsel itself described them, we are talking about consultations by a victim with an attorney. That

is not yet a claim that has any indicia of reliability and anything that has transpired between that client and the attorney is privileged. It's simply all off limits

And I just don't, you know, that counsel really hasn't really addressed that. I don't know that he rebutted the other points that we've made and for all the reasons that we said earlier, Your Honor, I think this motion should be denied summarily. Thank you, Your Honor.

THE COURT: All right. Thank you, Mr. Winograd.

Mr. Ruckdeschel, you have further comment, briefly?

MR. RUCKDESCHEL: Yes, Your Honor, very briefly. There was a comment just a minute ago from my colleague at Jones Day that nobody's disputing that this information is relevant with respect to the documents that they're demanding from Plaintiff law firms directly.

And that's exactly what we've disputed. You know, it strikes me as the comment in the hearing with Mr. Placitella a minute ago where the claim was made that, you know, nobody's disputing that the stay applies.

And Mr. Placitella has to get up and say, that's exactly what we're disputing. The stay doesn't apply.

We have disputed at every step of the way any relevance of this information coming from the law firms. There was no argument as to whether it was relevant and I pointed that out in the opposition to the motion. They cited two cases

in the motion with respect to the two requests for production at issue with my firm.

Those cases stand for the proposition, if you take their parentheticals correctly, that relevant evidence is discoverable. Duh, but this evidence isn't relevant.

And to then come in and say, well, I don't have a case for you that it's relevant and I could just ask the law firm for whatever they've got beyond what was their clients' and no one's disputing that, it's just ignores the truth.

It ignores the papers that have been filed. It ignores the responses. It ignores the entire meet and confer process and the responses with respect to that. And it's just not proper. You've got to end this, Judge. Thank you.

MS. O'DELL: Your Honor? Leigh O'Dell from Beasley Allen.

THE COURT: Yes?

MS. O'DELL: I have my hand up and somehow it's fading in the background. If I could have a moment?

THE COURT: That's quite all right.

MS. O'DELL: Thank you. First, I would just join in the comments and arguments that have been made by TCC counsel and others, particularly in relation to estimates of either Beasley Allen's inventory or group of cases, or to the aggregate liability.

Clearly those impressions, analyses, evaluation of

the facts are work product and are privileged and should not be produced.

But I wanted to raise my hand and add that there have been comments made Mr. Torborg that the Plaintiff law firms have not participated in this process in good faith, have not looked for documents that might be responsive, that are non-privileged.

And that's just not the case. In relation to communication with other lawyers, communication with co-counsel has been well-described, are privileged. But in the case of communications with other lawyers that are non-privileged, I can tell you from our firm's perspective, even though we're not a party, even though we have not filed a Motion to Dismiss as a firm, we took steps to make a good faith review and where there was a communication that was not privileged, we produced it.

So to suggest somehow that there's been an improper approach to this by Plaintiff's counsel I think is not accurate and I just wanted to let the Court know that.

THE COURT: All right. Thank you.

Ms. Parfitt?

MS. PARFITT: Thank you, Your Honor. And I, again, am glad that you're feeling better.

THE COURT: Thank you.

MS. PARFITT: Your Honor, points that have not been, perhaps not been raised and discussed by others, but as Ms.

O'Dell indicated as well, we have taken any and all requests by counsel quite seriously. That's how we handle all types of requests.

We made a search of our files despite the fact that we felt any of the requests the Defendants asked that we had objected to were -- had some type of relevance.

We did not. I'm write down the road from Jones Day and I would have been delighted to receive a request to meet with them and talk with them. I suspect that would have been a very short meeting, but to suggest that there was an offer, there was not.

Also, with regard to investigation of our claims and perhaps very relevant to what we will see down the road -- what our firm does, like all other firms, most of the firms on this recording today is do an investigation of their claims so that, in this particular case, as it pertains to ovarian cancer cases, what we do file are epithelial ovarian cancer cases, cases that are supported by the science and supported by the Daubert ruling of the Honorable Judge Wolfson.

So that does take time, and just because someone retains the law firm of Ashcraft & Gerel does not mean -- we ultimately make an assessment that there is this one that need to be filed.

And so, those discussions, those investigations are all highly confidential and privileged until such time as a

case is filed.

And then, at the time the case is filed, that's public and available to LTL and any other Defendant in this case.

As to the other requests with regard to the 8.9 and any comments, I agree with Mr. Ruckdeschel and others. I'm sure we are all quite opinionated on 8.9 and when given the opportunity, would love to share those opinions with regard to that type of evaluation of these serious claims and a number that would be so minimal in its ability to compensate these clients.

But that said, any and all those types of communications are indeed privileged and are indeed work product, as are the financial distress analysis that we, or any other clients, would make.

But I just wanted to, I felt compelled to say, as we've heard quite a bit, the firms that have spoken, the TCC whose opposition we do in fact embrace, I think have been very clear with regard to the type of investigation to make and the seriousness with which we respond to any requests, not only at the Court, but frankly, of counsel.

This matter involves women that are dying, women that have died. And to suggest we would do anything less than that, is an insult. Thank you, Your Honor.

THE COURT: Thank you.

Mr. Molton?

MR. MOLTON: Yes, Your Honor. I didn't expect to speak, but I got a call from Ms. Lisa Busch of the Weitz Luxenberg firm who unfortunately, for whatever reason is not appearing.

She had her hand up, but apparently, she's not within the webinar. So she just asked me lest, Your Honor, as you review the documents, to relay to you that they did file a response last night in opposition and she stands on it for the Weitz Luxenberg firm, as well as the statements made by other colleagues as well as by the TCC and refers you to the fact therein that, as well, they were not properly served.

So that's all I have to do, Judge. I'm just transmitting that from the Weitz Lux firm who, through whatever miscommunication was not on the webinar. Thank you, Your Honor.

THE COURT: No problem. I did receive their submission and I hope your daughter's program or event went well.

All right.

MR. MOLTON: Your Honor, thank you so much.

THE COURT: Yup.

MR. MOLTON: Thanks so much for the courtesy of extending this.

THE COURT: No problem.

Mr. Torborg, last comments?

MR. TORBORG: Thank you. I'll be very quick. I just want to point out, again, we're talking about, on the first issue, we're talking about individuals that the firm has accepted as clients, not every single person that's walked in their door and discussed the potential filing of a claim.

So there has been some filter between just any old person and someone who might actually file a claim. So we think that information is highly relevant and should be produced. Thank you.

THE COURT: All right. Bear with me one second.

All right. So there countervailing issues with respect to any Rule 26(b)(1) context.

First that the requested discovery has to be relevant and, as we all know, in 2015, relevancy was changed to incorporate concepts of proportionality and relevancy now is defined as any matter that bears on or that reasonably could lead to other matter that could bear on any party of the claim or defense. That's very broad.

However, the restriction on proportionality then weigh in. So this Court has to take into account the importance of the discovery in resolving the issues and whether the burden or expense involve in the proposed discovery would outweigh any benefit.

In looking at the document demands issued in

conjunction with the subpoenas, the Court is of the view that the bulk speak privileged information; the range of settlement demands or offers that have been extended, communications with respect to the propriety of the $8.9 billion settlement, the vast bulk of any such communication through document exchange between Plaintiffs' firms would, to this Court, be in all likelihood, while looking at a specific communication, would all likelihood be subject to a privilege.

Now, I believe Mr. Torborg is correct. The Court could endeavor to say, okay, provide such discovery, identify the privileged communications in a log. That goes to proportionality and the expense and the time that would be associated in doing so as compared to the slim result, slim-numbered result that would produce a non-privileged document.

So the Court is not going to direct that. The Court also takes into account the arguments made with respect to clients that come into the door, through the door. They may sign retainer agreements, but their claims are under review and investigation and there's, of course, a percentage that do not lead to actual lawsuits being filed.

At what point the determination is made between investigation and the decision and determination to bring a suit is a fine line.

Mr. Satterley had identified various situations or potential clients where the determination had been made to

bring suit but suit has not been brought. Obviously, the litigation has moved beyond a point in those situations where Mr. Satterley can comfortably identify claims that would be.

If we had, of course, if we have a claims bar date most of this would be academic, you know, all creditors would be put to task to file claims and we would be able to see and maybe at some point, we get to that.

At this juncture, I am going to direct compliance with the subpoenas in a limited fashion. The law firms are to produce documents which evidence refer or relate to a number, that number being the number of filed claims or -- and by claims, let me use my language.

These would be claims for injury due to use or exposure to talcum powder that had been sold or marketed or distributed by a J&J or any of its affiliates.

The law firms are to produce a number of claims that they are handling which have not been filed, but for which a determination has been made to bring suit.

So two numbers: those that have been filed, which I'm not sure Johnson & Johnson or the Debtor requires, but if they do, there's no privilege.

And the number of claims for which there has been a determination to bring suit but have not yet done so.

Now, I'm not looking for individual names or information on those cases. I do not see a privilege issue

with speaking about a number, and that's it. Beyond that, the motion is denied.

MR. RUCKDESCHEL: Thank you, Your Honor.

THE COURT: Any questions or clarification, Mr. Ruckdeschel?

MR. RUCKDESCHEL: Your Honor, I just want to make sure that based on the motion, the discovery requests that Your Honor's ruling relates to is interrogatory number 1 and that was the one that required, or requested a number of filed or unfiled claims and Your Honor has ruled that, to the extent that there wasn't an answer to interrogatory number 1, you're ordering compliance as just described of an additional answer and only for that discovery request, correct?

THE COURT: It would appear so.

Mr. Torborg, you want to weigh in?

MR. TORBORG: Yeah. I mean, we also had a document request and a subpoena that's pertinent to this as well.

THE COURT: The document was against -- the request was for documents which ended in a number?

MR. TORBORG: Yes, indicia to show.

THE COURT: Again, but I'm -- certainly, the documents are not to include any privileged information or personal privacy information. It's simply a number.

MR. RUCKDESCHEL: So my concern there, Your Honor, again, Jonathan Ruckdeschel, my concern there is what

essentially is being requested, the two document production requests that were addressed in the Motion to Compel did not relate to the document request about number of claims.

The discovery request relating to the number of claims, that was the subject of the Motion to Compel is interrogatory number 1 and interrogatory number 1 only.

And so, I think that the Court's ruling has to be limited to what was at issue in the motion and the only one that was at issue in the motion with respect to number of claims was interrogatory number 1.

And so, I think everybody understands what Your Honor has said about the information that's required to be provided, but because the only thing before the Court in that regard was that one discovery request, I think that the Court's ruling has to be confined to that, undue process grounds, if nothing else.

THE COURT: Well, but maybe there's a clarification. My understanding was that there was a document request associated with the interrogatories.

MR. TORBORG: It is.

MR. RUCKDESCHEL: Not an issue in the Motion to Compel.

THE COURT: Mr. Torborg?

MR. TORBORG: We have a document request for documents that they can show the total number of filed claims, yes.

MR. MAIMON: If I may, Your Honor?

THE COURT: Mr. Maimon?

MR. MAIMON: Yes, Your Honor. This is an impossibility. It something that might exist in Jones Day where they keep documents of numbers of cases.

But we have retainers from clients. We have clients' personal information. We don't have a document which has a number on it of unfiled cases or, quite frankly, filed cases.

We have --

THE COURT: Then your response is, we don't have any document that meets that discovery request.

MR. MAIMON: Well, I do have the retainer agreements. I do have the client medical records.

THE COURT: Well --

MR. MAIMON: I don't want to be in violation of Your Honor's Order, so that's why I think Mr. --

THE COURT: -- I thought I made it clear, I don't expect you to deliver retainer agreements with names or the medical record.

If you could use those to answer the interrogatory, then that, as far as the number.

MR. MAIMON: So I think, and that's why I think that Mr. Ruckdeschel's point is really well taken, that the interrogatory asked for the information that Your Honor has ordered us to get, which is, give us the number of filed cases,

give us the number of unfiled cases; as Your Honor has defined those.

THE COURT: Right.

MR. MAIMON: But if Your Honor now exceeds to Mr. Torborg's request that, oh, well, we want documents, that opens up a pandora's box and we're never going to get anything done here, right.

THE COURT: Mr. Torborg? And then --

MR. TORBORG: Yeah. I just wanted to say, I mean, our motion definitely includes request for production number one, which is documents sufficient to show the number of filed and unfiled claims; paragraph 8 of our motion.

THE COURT: Mr. Satterley?

MR. SATTERLEY: Yes, Your Honor. I accept Your Honor's ruling with regard to identifying the number. We can do that, but if Your Honor extends that to documents, first of all, the request is so vague and unduly burdensome and it would literally take me weeks, if not months, to have my staff go through all my files to try to find documents in response to this.

I'm in trial right now for a dying mesothelioma. I'm also trying to assist --

THE COURT: Right.

MR. SATTERLEY: -- with regard to the preparation of the Motion to Dismiss hearing which Your Honor set. This is

really harassing. If I --

THE COURT: I'm going to make it easy, Mr. Satterley. I'm going to make it easy, okay, at least I think I'm going to make it easier for all of you.

The only document that has to be produced would be an actual list, if it's maintained, of claims filed and claims to be filed. Otherwise, I'm going to ask you for the interrogatory response.

I'm not looking to amass any piece of paper that wouldn't show a claim.

MR. SATTERLEY: Thank you, Your Honor.

THE COURT: All right. I think we're done for the day. We should be able to figure this out. Thank you, all.

MR. SATTERLEY: Have a good weekend.

THE COURT: Thank you. Take care, everyone.

MR. TORBORG: Bye, now.

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C E R T I F I C A T I O N

We, KAREN WATSON and TRACY E. VERGOLLO, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Karen Watson
KAREN WATSON

/s/ Tracy E. Vergollo
TRACY E. VERGOLLO
J&J COURT TRANSCRIBERS, INC. DATE: June 5, 2023